03630.000143.                              <u>PATENT APPLICATION</u>

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:                    )
                                         :    Examiner: Sy D. Luu
LAURENCE A. LAVENDEL, et al.             )
                                         :    Group Art Unit:  2173
Application No.: 08/944,435              )
                                         :
Filed: October 6, 1997                   )
                                         :
For:    USER INTERFACE FOR IMAGE         )
        ACQUISITION DEVICES              :


Commissioner for Patents
Washington, D.C.  20231


DECLARATION UNDER 37 C.F.R. § 1.131 OF
<u>LAURENCE A. LAVENDEL</u>


Sir:

I do hereby declare and say that:

1.    Laurence A. Lavendel, Timothy L. Kohler, Edward Stitt, and

Harold Schoolcraft are the inventors of the subject matter of Claims 74 to 75, 77 to 82, 84

to 89, 91 to 96, 98 to 103 and 105 to 108 (hereinafter referred to as the "claimed subject

matter") reproduced as Exhibit A attached hereto and described in the above-identified

patent application.

2. The claimed subject matter has been rejected in the Office Action dated November 20, 2001 (hereinafter referred to as the "Office Action") under 35 U.S.C. § 102(a) based on screen captures taken from Adobe Systems Inc.'s PhotoDeluxe, Version 2 software application (hereinafter referred to as the "PhotoDeluxe program").

3. Along with the screen captures, the Office Action cites an Adobe Systems, Inc. press release dated August 11, 1997. In the "Pricing and Availability" section on page 3 of the press release, it is indicated that the PhotoDeluxe program is "expected to be available in late August 1997".

4. For purposes of this declaration, it is assumed but in no way conceded that the "expected" date of availability of the PhotoDeluxe program factually and accurately represents an actual date of availability of the PhotoDeluxe program. Accordingly, the date of availability of the PhotoDeluxe program is assumed for the purposes of this declaration to be late August, 1997.

5. Prior to August, 1997, the inventors conceived in the United States the claimed subject matter.

6. Prior to August, 1997, the inventors reduced to practice in the United States the claimed subject matter.

7. With respect to the evidence needed for a showing under 37 C.F.R. § 1.131, section (b) thereof states that:

> [t]he showing of facts shall be such, in
> character and weight, as to establish
> reduction to practice prior to the effective

date of the reference, or conception of the
invention prior to the effective date of the
reference coupled with due diligence from
prior to said date to a subsequent reduction
to practice or to the filing of the application.
Original exhibits of drawings or records, or
photocopies thereof, must accompany and
form part of the affidavit or declaration of
their absence satisfactorily explained.

8.     Prior to August, 1997, the inventors effected the implementation of software program code that embodied the claimed subject matter.  A copy of the program code was previously submitted in microfiche form, as Appendices A and B, when the above-identified patent application was filed on October 6, 1997.  A hard-copy version of the software program code of Appendices A and B is attached hereto as Exhibit B.

9.     A section of the program code entitled "CPageTone :: OnInitDialog", which commences on page 27 of Exhibit B, *inter alia* initializes and draws a property page, with at least first and second selection elements that correspond to the same control, and a control region which comprises at least one control element.  A section of the program code entitled "CPageTone :: OnSelectToneMode", which commences on page 30 of Exhibit B, *inter alia* changes the appearance of a property page, in response to a selection of an element in the property page, the selection elements are shown when either the first or the second appearances are provided in the property page.

10.    As a result of testing performed on the program code, the inventors determined that the code worked as intended.

11.    I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true, and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of this application and any patent issuing thereon.

May 2, 2002
Date

Laurence A. Lavendel

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